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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
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Agenda item 2

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Ms. Palley: draft resolution

Draft resolution on the Situation of Human Rights in Pakistan

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recognizing the enormous responsibility of the United Kingdom of Great Britain and Northern Ireland for having left in the Indian subcontinent traditions of:

(i) Imperialism toward peoples and their territories;

(ii) Harsh military suppression of dissent combined with sweeping special emergency powers;

(iii) Reactionary penal laws;

(iv) Double standards of enunciating human rights and the rule of law, which were formally rather than practically applied in her colonial possessions and protectorates;

(v) Unwillingness and a degree of inability to undertake real reform in the Indian sub-continent of social, cultural, economic or other institutions or of traditional practices and customs depriving women and girls of their rights; and

(vi) Unrestrained capitalist and feudalist exploitation of labour and natural and other resources,

Recognizing also that Pakistan, after 50 years of independence, has maintained much from these traditions and has done little to correct the economic, social and cultural ills and human rights violations taking place throughout that State,

1. Observes, in this fiftieth anniversary year of the independence of Pakistan, the world's fifth most populous State:

(i) That the Commission on Human Rights, in its resolution 1997/38 urged all States to become parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as a matter of priority; recalled that freedom from torture is a non-derogable right; called upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment; and stressed that those who encourage, order, tolerate or perpetrate such acts must be severely punished;

(ii) That the Special Rapporteur on the question of torture in his annual reports over a number of years has reported to the Commission on Human Rights on allegations indicating that torture of persons in the custody of the police and the paramilitary and the armed forces is endemic, widespread and systematic in Pakistan, and that the majority of women held in police custody are subjected to some form of sexual abuse, including rape;

(iii) That the Special Rapporteur on the question of Torture visited Pakistan in February and March 1996 and reported that torture, including rape, and similar cruel, inhuman or degrading treatment are rife in Pakistan (E/CN.4/1997/7/Add.2, para. 96) and that this state of affairs is perpetuated by the virtual impunity from criminal sanction of the perpetrators of these grave crimes (paras. 84-98);

(iv) That the Special Rapporteur on the question of torture discovered that, contrary to assurances given him by the Government of Pakistan, bar fetters were in use in prisons (E/CN.4/1997/7/Add.2, paras. 50-62);

(v) That the Abolition of the Punishment of Whipping Act 1996, precluding courts (not prisons) from awarding a sentence of whipping "except in cases where the punishment of whipping is provided as Hadd", permits continuation of the prescribed punishment of 100 lashes in the case of illicit sexual relations, and death by stoning, in the case of adultery;

(vi) That the Special Rapporteur on the question of torture reported that detainees were kept in unauthorized detention centres by the Federal Intelligence Agency and by the army;

(vii) That the Working Group on Enforced or Involuntary Disappearances expressed concern in its report at the failure in Pakistan to hold detainees only in officially recognized places of detention (E/CN.4/1997/34);

(viii) That the Commission on Human Rights, in its resolution 1997/61 demanded that all Governments ensure that the practice of extrajudicial, summary or arbitrary executions be brought to an end and that they take effective action to eliminate the phenomenon, and reiterated the obligation of all Governments to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions and to identify and bring to justice those responsible;

(ix) That the Special Rapporteur on extrajudicial, summary or arbitrary executions expressed concern that there had been deaths in custody in Pakistan following detention in life-threatening conditions and that such deaths suggested a pattern of violence against detainees (E/CN.4/1997/60);

(x) That the Human Rights Committee of Pakistan documented 200 deaths in Karachi alone during 1995 as a result of torture in custody;

(xi) That the Special Rapporteur on the question of torture, in discussing the situation in Karachi, reported the widespread killings which allegedly occurred in police custody or in staged "encounters" in which the police or Rangers (the paramilitary

force which replaced the army in 1995), shoot and kill suspects, noting that, although the forces of law and order are under attack and about 300 have been killed since 1992, no police are killed in such "encounters";

(xii) That the Working Group on Arbitrary Detention decided that 6 persons who were Ahmadis were arbitrarily detained for exercising their freedom of conscience and that 125 other persons were similarly detained, accused of blasphemy under section 295C of the Pakistan Penal Code (an offence carrying a mandatory death penalty) as a result of Ordinance XX (upheld by the Pakistan Supreme Court) which prohibits Ahmadis from practising or calling their faith Islam (E/CN.4/1997/4/Add.1 of 29 October 1996, Decision 63);

(xiii) That, following his visit to Pakistan, the Special Rapporteur on religious intolerance commented on the desirability of repealing capital punishment as the penalty for apostasy (E/CN.4/1996/95/Add.1);

(xiv) That the Commission on Human Rights, in paragraph 3a of its resolution 1997/18, recalling General Assembly resolution 26/55 of 25 November 1981, urged States to ensure that their constitutional and legal systems provide adequate and effective guarantees of freedom of religion and belief to all without discrimination;

(xv) That the Commission on Human Rights, in its resolution 1997/16, reaffirmed the obligation of States to ensure that persons belonging to minorities may exercise fully and effectively all human rights and fundamental freedoms without any discrimination and in full equality before the law in accordance with the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;

(xvi) That the Committee on the Elimination of Racial Discrimination in its concluding observations (CERD/C/304/Add.25, 23 April 1997) expressed concern that the policy of Pakistan to recognize only religious minorities excludes ethnic, linguistic or racial groups living in the country from any specific protection under the International Convention on the Elimination of All Forms of Racial Discrimination that would derive from official recognition of such

groups as minorities, and that discrimination based on race, colour, language, or national or ethnic origin is not prohibited by the Constitution of Pakistan;

(xvii) That in the Vienna Declaration and Programme of Action, adopted in June 1993, the World Conference on Human Rights stated that the human rights of women are inalienable, integral and an indivisible part of human rights and that the eradication of discrimination on grounds of sex is a priority objective,

(xviii) That the Vienna Declaration and Programme of Action affirmed that gender-based violence is incompatible with the dignity and worth of the human person and must be eliminated and that in resolution 1997/44 the Commission on Human Rights called on States to enact and to enforce legislation or amend penal codes where necessary to ensure effective protection against rape, sexual harassment and all other forms of sexual violence against women;

(xix) That in its resolution 1997/43 the Commission on Human Rights urged States to limit the extent of any reservations to the Convention on the Elimination of All Forms of Discrimination against Women and to ensure that no reservations are incompatible with the object and purpose of the Convention, but that Pakistan has entered a reservation that its accession is "subject to the provisions of the Constitution", and that that Constitution implicitly enshrines certain serious discriminatory practices against women;

(xx) That the Commission on Human Rights, in its resolution 1997/20, expressed its grave concern at manifestations of contemporary forms of slavery, inter alia those reported to the Working Group, and, in resolution 1997/78, called upon States to translate into concrete action their commitment to the progressive and effective elimination of all forms of exploitative child labour and, as a matter of priority, to eliminate all extreme forms of child labour, such as forced labour, bonded labour and other forms of slavery and in addition to make primary education free and compulsory;

(xxi) That, in its resolution 1997/42, the Commission on Human Rights called upon States to take all necessary and effective measures in

strict conformity with international law, including human rights standards, to prevent, combat and eliminate terrorism in all its forms and manifestations, wherever and by whomever committed;

(xxii) That it is reliably reported that the Government of Pakistan has recently failed to prevent 1,500 schoolchildren from joining the Taliban forces in Afghanistan, that Government closing its eyes to the activities of religious organizations because it has itself been backing Taliban and other forces waging a holy war in other areas;

(xxiii) That in his report, the Special Rapporteur on extrajudicial, summary or arbitrary executions noted the deaths of children in armed combat or internal strife (E/CN.4/1997/60, para. 56);

2. Welcomes:

(i) The reaffirmation by the President and the new Government of Pakistan of the independence of the judiciary, in the light of interferences with the judiciary by the Government in office until November 1996;

(ii) The creation by the previous Government, in October 1995, of the Ministry of Human Rights and the actualization of the Government's invitation to the Special Rapporteur on the question of torture to visit Pakistan in February and March 1996, although regretting that some of those who had discussions with him were questioned by security forces about those discussions;

(iii) The directions of the Government, headed by Mr. Nawaz Sharif, to the Ministry of Human Rights to take concrete steps to implement his party's human rights policy;

(iv) The Pakistan Law Commission's unanimous recommendation to the current Government that it abandon its intention to establish special courts or tribunals outside the judicial hierarchy in order to have expeditious trials of certain criminal offences, and that the Government deferred proceeding with a bill to amend the Constitution for the purpose of creating such courts;

(v) The Pakistan Law Commission's decision to review in the future certain laws, and, following consideration of these laws, to make

recommendations to the federal Government, inter alia in respect of prison reforms, the blasphemy law, laws relating to children, including child labour, and the Hudood Ordinances;

(vi) The fact that a number of senior police officers are facing charges of abuse of authority and involvement in the criminal violence in Karachi and some other areas, but notes that the killing of Mr. Mir Mutaza Bhutto and Mr. Jatoi, who were unarmed, and were killed with six of their associates, occurred in a police ambush which a judicial committee of inquiry ascribed to "criminal negligence" rather than to murder on instructions of high authorities in the State;

(vii) The appointment of a judicial commission of inquiry into extrajudicial killings in Karachi and the other urban areas of Sindh from 19 October 1993 to 4 November 1996 (the period of Mrs. Bhutto's Administration);

(viii) The announced intention of the Government to eliminate bonded labour (this having been effectively abolished according to a series of earlier communications made to the Working Group on Contemporary Forms of Slavery) and the intention of the Government to achieve universal primary education within five years;

3. Warmly welcomes the renewed talks between Pakistan and India under the Simla Agreements, believing that only peaceful negotiations, involving also full participation by the people of Jammu and Kashmir, can end the gross and systematic violations of human rights which have occurred and are still occurring, and also terrorism;

4. Urges the Government of Pakistan;

(i) To prosecute, in accordance with due process of law and international standards, all those who have perpetrated human rights violations;

(ii) To extend the terms of reference of the Judicial Commission of Inquiry to cover extrajudicial killings from 19 June 1992 in Karachi and other urban areas of Sindh (this being the time when the army launched "Operation Clean-Up" and when such killings began to occur on a large scale) up to the time of the appointment of the Commission of Inquiry on 23 June 1997, there being well

attested reports that such killings continued after the 3 February 1997 election, including systematic killings in May and June 1997;

(iii) To ratify the International Covenant on Civil and Political Rights and its Optional Protocol;

(iv) To ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(v) To ensure the passage of legislation abolishing the use of fetters and any forms of restraint which are inhuman or degrading or capable of inflicting torture on the person of the detainee or prisoner;

(vi) To repeal the Hudood Ordinances insofar as they require the imposition of whipping and other inhuman or degrading treatment by way of punishment, and in the interim to take administrative measures to ensure the impossibility of inflicting such a punishment;

(vii) To take measures promptly to ensure equality before the law for women and an end to discrimination against them in judicial proceedings and in all other respects, in particular by amending the Islamic Zina Ordinance of 1979, which makes it difficult for a woman to meet the evidentiary requirements to establish her case;

(viii) To cooperate fully in the follow-up of the Special Rapporteur on religious intolerance in relation to his recommendations made after his visit to Pakistan in 1995;

(ix) To consider amending the Penal Code and Ordinance XX in such a manner that members of the Ahmadi community may fully exercise their right to practise their religion, and to remove the possibility of exploitation of the law by other citizens to intimidate members of religious minorities;

(x) To take active measures, including amendment of legislation and administrative action, to discourage violence by religious extremists and to ensure that the police forces do not act merely as bystanders when persons and property are threatened and destroyed;

(xi) To recognize as minorities communities or groups of persons based on race, colour, language or national or ethnic origins and to

accord them, as such, the protection of the Constitution and the International Convention on the Elimination of All Forms of Racial Discrimination, especially bearing in mind that the Mojahir community of Sindh is an ethno-linguistic minority and has faced severe discriminatory action by the law enforcement authorities of Sindh, in particular the police, paramilitary Rangers and State intelligence agencies;

(xii) To consider ratifying the conventions of the International Labour Organization relating to the elimination of the exploitation of child labour, particularly those concerning the minimum age for employment and especially hazardous work for children, and to eliminate child forced labour, bonded labour and other forms of slavery;

5. Calls upon the Government of Pakistan:

(i) To ensure that capital punishment will not be imposed for apostasy, and in particular to consider amending article 295 C of the Penal Code;

(ii) To ensure that so long as the death penalty is the punishment, charges under section 295 C of the Penal Code are not proceeded with, in particular in respect of Christians, Ahmadis and members of any other minority religious group currently charged under the section;

(iii) To take effective action to ensure that its territory is not used as a base and that persons under its jurisdiction, particularly children, are not recruited to engage in terrorism and violence in other States;

6. Decides to recommend that the Commission on Human Rights consider the situation in Pakistan at its next session.